

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

MISSOURI NURSES' ASSOCIATION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Public Case No. 76-008
	)	
UNIVERSITY OF MISSOURI MEDICAL CENTER,	)	
Columbia, Missouri,	)	
	)	
Respondent.	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**FINDINGS OF FACT**

(1) On March 17, 1976, the Missouri Nurses' Association (herein referred to as Petitioner) filed with the State Board of Mediation a Petition for designation of an appropriate bargaining unit and certification as exclusive bargaining representative for a proposed unit of all registered nurses, excluding the Director and Assistant Directors of Nursing employed by the University of Missouri Medical Center, Columbia, Missouri (herein referred to as Medical Center).

(2) On April 6, 1976, the Board of Curators of the University of Missouri, on behalf of the Medical Center, filed an Answer with the Board.

(3) The Petitioner is a professional association of registered nurses, affiliated with the American Nurses' Association which exists for the purpose, inter alia, of promoting and protecting the economic and general welfare of nurses.

(4) The Petitioner is separated into twenty (20) Districts statewide and is further subdivided into local units which relate to labor relations.

(5) District 7 of Petitioner encompasses the geographic area in which the Medical Center is located.

(6) The local unit of Petitioner relating to the Medical Center is known as the Quality Nurse Control Group.

(7) The Quality Nurse Control Group has no direct relationship with District 7, but responds directly to the state organization, Petitioner.

(8) The Quality Nurse Control Group has met on a monthly basis with the Director of Nursing and Assistant Directors of Nursing of the Medical Center in a representative capacity to discuss wages, hours and working conditions.

(9) The Petitioner provides labor relations assistance to the local units through its Economic and General Welfare Committee.

(10) The Petitioner is the exclusive bargaining representative of registered nurses at St. Louis - Little Rock Hospital, St. Louis; Kansas City Veteran's Administration Hospital; facilities located within the State Department of Mental Health.

(11) The Curators of the University of Missouri, a public corporation, is the legal entity created by the State of Missouri, for the purpose of owning and operating the University.

(12) The University of Missouri is governed by a Board of Curators pursuant to Article IX, Section 9(a) of the Constitution of Missouri, 1945.

(13) The University of Missouri has facilities located throughout the state with campuses located in the cities of Columbia, St. Louis, Kansas City, and Rolla.

(14) The Board of Curators governs the University through Rules and Regulations.

(15) The employment and appointment of all employees of the University is pursuant to unified rules, regulations and policies.

(16) The Medical Center is a hospital complex at the University of Missouri - Columbia, and is the only hospital in the University of Missouri system.

(17) Student Health clinics which are staffed by registered nurses are operated at other campuses of the University; their activities are that of a clinic for students and faculty only.

(18) The University has, in addition to registered nurses, many full-time professional employees located on campuses and in facilities throughout the University.

(19) Registered Nurses employed at the University Hospital are not all within the Nursing Service Department, but are assigned to separate departments of emergency room, outpatient clinic, clinic research center, family practice center, renal dialysis center, radiology and cardiac catheterization laboratory.

(20) The job classifications under which the University hires registered nurses are those of Director of Nursing, Assistant Directors of Nursing, Head Nurses, Staff Nurses, Nurse Practitioners, and Nurse Coordinators.

(21) As of January 11, 1977, the University Hospital employed one (1) Director of Nursing, six (6) Assistant Directors, sixteen (16) Head Nurses and two-hundred fourteen (214) Staff Nurses.

(22) Registered nurses are licensed by the State of Missouri, pursuant to Section 335.046.1 RSMo. Supp. 1976.

(23) No other group of professionals or nonprofessionals have the same or similar qualifications of a registered nurse.

(24) Registered nurses are independent health care professionals.

(25) Head Nurses have the authority to effectively recommend, after interviewing, the hiring of personnel for their nursing unit.

(26) Head Nurses have the authority to effectively recommend discharge and/or discipline of employees.

(27) Head Nurses are on call twenty-four hours a day and are responsible throughout for the effective functioning of the personnel in the unit under them.

(28) Head Nurses are paid a salary based upon a salary scale which is separate and distinct from Staff Nurses and the rates of over-time pay are different.

(29) Head Nurses make written evaluations of the job performance of Staff Nurses within the Head Nurses' particular unit.

### **CONCLUSIONS OF LAW**

WHETHER THE PETITIONER IS AN APPROPRIATE OR PROPER ORGANIZATION FOR DESIGNATION AS EXCLUSIVE BARGAINING REPRESENTATIVE FOR ANY UNIVERSITY OF MISSOURI EMPLOYEES

The record indicates that the Petitioner has a history of representation and bargaining and has actively engaged in such directly and through assistance to its local units.

The record further indicates that the President of the Petitioner is the Director of Patient Care at St. Louis Children's Hospital. Another member of the Board of Directors is the Director of Nursing of Homer G. Phillips Hospital, St. Louis, Missouri. The President of District 7 of Petitioner is an Assistant Director of Nursing at the University Hospital and it is agreed by all parties that the position of Assistant Director of Nursing is one of a supervisor.

The University alleges that the presence of supervisory nurses on the Board of Directors of the Petitioner disqualifies the Petitioner as an exclusive representative because of a conflict of interest. The University contends that such conflict of interest exists even though none of the University's supervisors are on the Board of Directors of the Petitioner. This premise is unsupported by the evidence.

There is sufficient evidence to show that bargaining authority is delegated to Petitioner's Economic and General Welfare Committee.

In addition, the record is clear that bargaining agreements are ratified by the local unit, Quality Nurse Control Group.

The facts in this case are analogous with those in Sierra Vista Hospital, Inc., and California Nurses' Association, 1976-77 CCH NLRB 17, 362, 225 NLRB 155 (1976), which held:

Our assessment of the present situation leads us to conclude and find that the local units of the CNA are not, with respect to the bargaining process, under the control, domination, or influence of the CNA hierarchy, supervisory or otherwise. Local units, such as this one, formulate their own bargaining demands and select negotiating teams from their ranks to participate in negotiations. They also ratify any tentative agreements reached without interference or veto by the CNA. Once a contract is ratified, CNA's execution of it constitutes nothing more than a formality. As for the assistance provided by the EGW staff, the evidence establishes, and we find, that it is advisory and technical in nature and does not infringe upon or diminish a unit's control over local bargaining matters or its responsibility therefor.<sup>6</sup> Indeed, the EGW operates as a separate arm of the CNA free of any real or potential control by the latter's board of directors. True, those directors promulgate general EGW and collective-bargaining policies, hire the director of EGW and require that individual to make periodic reports to them, and allocate moneys to the EGW and its programs. But such general policymaking functions, inherent in any board of directors, is far removed from the specific type of supervisory influence or control with which the Board was concerned in Anne Arundel, supra. Furthermore, despite

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<sup>6</sup>Sisters of Charity of Providence, St. Ignatius Province, d/b/a St. Patrick Hospital, 225 NLRB No. 110 (1976).

the reporting requirement and the directors' control of the purse strings through the allocation of funds, record establishes that the staff of EGW acts independently in its implementation of those policies and in the conduct of actual negotiations. Lastly, none of the staff negotiators of EGW is employed in any capacity by any hospital or health care institution.

Accordingly, we find that the CNA has effectively delegated its collective-bargaining authority, which it acquired by virtue of the Board's certification here, to an autonomous local unit of nonsupervisory registered nurses, and that said local is properly exercising this authority on its own behalf.<sup>7</sup> Therefore, we find no merit to the Employer's contention that Petitioner (CNA) is disqualified to act as the

representative of the unit herein, and we shall deny the Employer's motion to revoke certification.

There is a strong public policy favoring the free choice of a bargaining agent by employees. This choice is not lightly to be frustrated. There is a considerable burden on a non-consenting employer, in such a situation as this to come forward with a showing of interest that danger of a conflict of interest interfering with the collective bargaining process is clear and present.

NLRB v. David Buttrick Co., 399 F.2d 505, 507 (1st Cir. 1968). This University has failed to do so.

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<sup>7</sup>Annapolis Emergency Hospital Association, Inc., d/b/a Anne Arundel General Hospital, [1974-75 CCH NLRB 15, 711] 217 NLRB No. 148 (1975); Oak Ridge Hospital of the United Methodist Church, [1974-75 CCH NLRB 16, 148] 220 NLRB No. 9 (1975); St. Rose de Lima Hospital, Inc., [1975-76 CCH NLRB 16,807] 223 NLRB No. 224 (1976).

Section 105.500.2 RSMo. 1969 states:

"Exclusive bargaining representative" means an organization which has designated or selected by a majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining.

Section 105.500.1 RSMo. 1969 states:

"Appropriate unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which established a clear and identifiable community of interest among the employees concerned.

It is the finding of this Board that Petitioner is an organization which is entitled to be certified as "exclusive bargaining representative" for an "appropriate unit".

WHETHER A UNIT LIMITED TO REGISTERED NURSES IS AN APPROPRIATE BARGAINING UNIT

Petitioner has filed a Petition for an appropriate unit of all registered nurses at the University Medical Center, excluding the Director of Nursing and Assistant Directors

of Nursing. The Respondent submits that a proper bargaining unit is an all professional unit comprised of all classified professionals.

This Board has previously confirmed the desire of broad units in the public sector; however, this philosophy does not foreclose the Board from finding appropriate separate bargaining units for registered nurses when they are sought to be represented on that basis.

This Board agrees with the language contained in the case of Mercy Hospital of Sacramento, Inc., and Local 250, Hospital Workers' Union, 1974-75 CCH NLRB 15,702, 217 NLRB 131 (1975) which states in pertinent part:

The Board notes that the primary and overriding concern of registered nurses is to provide patient care. Unlike most professional employees, nurses are required to be on call 24 hours a day, seven days a week, 365 days a year. State law requires a separately administered department of nursing. Complete authority over the registered nurses is in a director of nursing. All hiring, firing and regulation of working conditions take place in the confines of the department of nursing. The nurses must be nationally and state-licensed.

The Board notes that it is of great significance that registered nurses have a singular history of separate bargaining and representation, often as a result of voluntary recognition. The Board notes that it has historically recognized these separate interests and routinely approved separate nursing units. Separate bargaining for other health care professionals has been on a scale of considerably smaller proportions.

In addition, although Respondent raises the point that registered nurses be included in a unit with other professionals, no other professionals have petitioned the Board for inclusion in a unit.

For the reasons stated, the Board finds that registered nurses share a community of interest that entitles them to separate unit.

WHETHER AN APPROPRIATE UNIT FOR PUBLIC EMPLOYEES SHOULD BE STATE-WIDE AND INCLUDE ALL UNIVERSITY CAMPUSES AND FACILITIES OR BE LIMITED TO THE UNIVERSITY OF MISSOURI MEDICAL CENTER, COLUMBIA, MISSOURI

The evidence presented at the hearing shows that there are registered nurses with the Department of Nursing and other departments within the University Hospital. In addition, there are registered nurses at the Student Health Clinics located on the campuses of the University at St. Louis, Rolla, and Columbia. Employment opportunity notices are posted at each campus for employment University-wide, and registered nurses can transfer from one campus to another. The rules and regulations and general labor policies of the University apply uniformly to all registered nurses no matter what their location.

In support of its position, the University cites the decision of this Board in the case of Laborers' International Union of North America, Public Service Employees' Local 45 vs. University of Missouri. Public Case No. 76-005 (1977), wherein it was held that the University of Missouri should be viewed for the purposes of a bargaining unit as one entity. The reasoning of the Board concerning over-fragmentation and over-proliferation of bargaining units in the Laborers' International case, supra., is applicable to this case as well.

It is the decision of this Board that an appropriate unit of registered nurses includes not only those at the Medical Center Hospital, but the registered nurses at the Student Health Clinics at the campuses of St. Louis, Rolla, and Columbia, as well.

WHETHER THE HEAD NURSES AT THE UNIVERSITY HOSPITAL ARE  
SUPERVISORS AND THEREFORE EXCLUDED FROM AN  
APPROPRIATE UNIT

In determining whether an individual should be classified as a supervisor, this Board considers the following seven factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
- (2) The authority to direct and assign the work force.
- (3) The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.

- (4) The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
- (7) The amount of independent judgement and discretion exercised in the supervision of employees.

The aforementioned factors were set forth by the Board in the cases of Western Missouri Public Employees, Local 1812 and Missouri State Council 72, American Federation of State, County and Municipal Employees v. Jackson County, Missouri, Public Case No. 90 (1976). St. Louis County Fire Fighters Assn., Local 398 I.A.F.F. v. Chesterfield Fire Protection District, et al., Public Case No. 76-022.

Head Nurses have the authority to effectively recommend, after interviewing, the hiring of personnel for their particular nursing unit and the evidence shows that such recommendations are followed. They also have the authority to effectively recommend discharge and/or discipline of employees.

Head Nurses are on call twenty-four hours a day and are responsible for the effective functioning of the personnel within their unit and are further responsible for seeing that their unit has proper personnel coverage on a given shift.

Head Nurses are paid a salary based upon a salary scale which is distinct and different from Staff Nurses.

Head Nurses make written evaluations of the job performance of the Staff Nurses within their units.

Head Nurses supervise between ten (10) to thirty-five (35) employees, including Staff Nurses, depending upon the nursing unit for which they are responsible.

Based upon the foregoing findings, it is clearly evident that the Head Nurses at the University Hospital are supervisors, and therefore excluded from an appropriate unit of registered nurses.

### **DECISION**

Pursuant to Section 105.525 RSMo. 1969, the State Board of Mediation finds the following unit to be appropriate:

All registered nurses of the University of Missouri Medical Center Hospital and Student Health Clinics, but excluding the Director of Nursing, Assistant Directors of Nursing and Head Nurses of the Medical Center Hospital.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Missouri Nurses' Association.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within ten days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Entered this 30th day of June, 1978.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn  
Michael Horn, Chairman

/s/ Harry R. Scott  
Harry R. Scott, Employer Member

/s/ Robert Missey  
Robert Missey, Labor Member